

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

JUN 25 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Implementation of the	)	
Telecommunications Act of 1996	)	
	)	
	)	
Telecommunications Carriers' Use	)	CC Docket No. 96-115
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	
	)	

**OPPOSITION OF THE ASSOCIATION FOR  
LOCAL TELECOMMUNICATIONS SERVICES  
TO PETITIONS FOR RECONSIDERATION**

The Association for Local Telecommunications Services ("ALTS") hereby opposes the Petitions filed May 26, 1998, by SBC, BellSouth, Bell Atlantic, and GTE, seeking reconsideration of the Commission's conclusion in its Section 222 CPNI Order that carriers are not allowed to use CPNI to "winback" customers that have chosen to take service from other carriers.<sup>1</sup>

**I. THE PETITIONS FOR RECONSIDERATION FAIL TO OFFER  
ANY PERSUASIVE ARGUMENTS WHY INCUMBENTS SHOULD BE  
ALLOWED TO USE CPNI IN "WINBACK" SITUATIONS.**

In its order implementing section 222 of the Telecommunications Act of 1996 ("Section 222 CPNI Order")<sup>2</sup>, the

---

<sup>1</sup> To the extent Ameritech's petition for reconsideration can be construed to also request such relief, ALTS opposes it for the same reasons.

<sup>2</sup> In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer

(continued...)

Commission held that section 222 prohibits a carrier from using CPNI for "winback" purposes:

"We also do not believe, contrary to the position suggested by AT&T, that section 222(d)(1) permits the former (or soon-to-be former) carrier to use the CPNI of its former customer (i.e., a customer that has placed an order for service from a competing provider) for 'customer retention' purposes. Consequently, a local exchange carrier is precluded from using or accessing CPNI derived from the provision of local exchange service, for example, to regain the business of a customer that has chosen another provider. The use of CPNI in this context is not statutorily permitted under section 222(d)(1), insofar as such use would be undertaken to market a service to which a customer previously subscribed, rather than to 'initiate' a service within the meaning of that provision. Nor do we believe that the use of CPNI for customer retention purposes is permissible under section 222(c)(1) because such use is not carried out 'in [the] provision' of service, but rather, for the purpose of retaining a customer that had already undertaken steps to change its service provider. Customer approval for the use of CPNI in this situation thus may not be appropriately inferred because such use is outside of the customer's existing service relationship within the meaning of section 222(c)(1)(A)." (Emphasis supplied.)

The petitions seeking reconsideration of this finding filed by SBC, BellSouth, Bell Atlantic, and GTE make similar arguments.<sup>3</sup> First, they argue that preventing the use of CPNI for winback purposes fails to promote competition. SBC at 9; BellSouth at 17; Bell Atlantic at 18; and GTE at 35. Second,

---

<sup>2</sup>(...continued)

Proprietary Information and Other Customer Information, CC Docket No. 96-115, Report and Order and FNPR, (released February 26, 1998).

<sup>3</sup> GTE and BellSouth also raise constitutional claims. Even if these claims had merit, however, the Commission lacks jurisdiction to hear constitutional challenges to any of the statutes entrusted to its administration by Congress.

they imply that "customer expectations" provide a guide to proper interpretation of the statute. SBC at 9; BellSouth at 17; and GTE at 34. Third, they contend the Commission's ruling broadening the range to CPNI to include the marketing of related services to an existing customer, should also include a former carriers' efforts to market the same service to a non-customer (or soon to be non-customer). SBC at 9-10. Each of these claims is unfounded.

First, when the Commission interprets Federal law under the authority granted it by Congress, it is bound by Congress' statements absent any fair ambiguity. Nowhere in section 222 does Congress authorize the use of CPNI in winback situations, nor can any such authority be fairly inferred from any portion of section 222. Consequently, Petitioners' views about good policy are simply irrelevant as a legal matter in interpreting section 222. However, if policy were a factor, it is manifest that CPNI should not be allowed for winback at the present. Given the current monopoly structure of the local telecommunications industry, the only carriers that can make any appreciable use of such a rule are the incumbents, which could utilize such CPNI for targeted, anti-competitive winbacks based not upon competitive goals, but the deterrence of new entrants.<sup>4</sup>

---

<sup>4</sup> The anti-competitive effect of permitting CPNI to be used for winback also precludes the forbearance treatment sought by Bell Atlantic (Petition at 17-20) and GTE (Petition at 32-39).

Second, the Commission's utilization of customer expectations in interpreting section 222(c)(1) did not reflect a belief that such expectations provide insight into the meaning of all portions of section 222, but rather guidance in resolving one particular ambiguity (at ¶ 35):

"Although the statutory language makes clear that carriers' CPNI use is limited in some respect, and thus fails to support the single category approach, it does not dictate the most narrow possible interpretation (i.e., the discrete offering approach). Nor does the statutory language, however, rule out a more general subscription-based understanding of the phrase 'telecommunication service from which such [CPNI] is derived,' consistent with the total service approach."

While the Commission ultimately relied upon customer expectations to resolve this uncertainty in the statutory language, it did so only in the narrow context of using its "total service approach" in order to determine the proper scope of CPNI.

Third, the incumbents' related claim that the Commission's "total service approach" (which permits the marketing of "related offerings within customers' existing service for their benefit and convenience" (at ¶ 35)) also extends to winback marketing for the same service offered to a non-customer is an undefensible stretch. The Commission is clear that its "total service approach" has no application to former customers (Section 222 CPNI Order at ¶ 35):

"Rather, we believe that the best interpretation of section 222(c)(1) is the total service approach, which affords carriers the right to use or disclose CPNI for, among other

things, marketing related offerings within customers' existing service for their benefit and convenience, but which restricts carriers from using CPNI in connection with categories of service to which customers do not subscribe." (Emphasis supplied; underscored portion omitted from SBC's quotation (SBC Petition at n.26)).

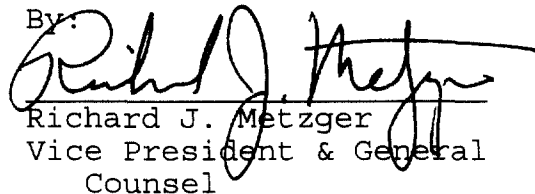
The portion of this quotation omitted by SBC thus makes it unmistakably plain that the "total service approach" applies only to the scope of CPNI that can be used in marketing to existing customers, and does not apply to former customers which do not take service.

#### **CONCLUSION**

For the foregoing reasons, the petitions for reconsideration filed by SBC, BellSouth, Bell Atlantic, and GTE should be denied.

Respectfully submitted,

By:



Richard J. Metzger  
Vice President & General  
Counsel

**Association for Local  
Telecommunications Services**  
888 17th Street, N.W., Suite 900  
Washington, D.C. 20006  
(202) 969-2583

June 25, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June, 1998, copies of the foregoing Opposition of the Association for Local Telecommunications Services to Petitions for Reconsideration were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.

  
Emily M. Williams

Magalie Roman Salas\*  
Secretary  
Federal Communications Comm'n  
1919 M Street, N.W.  
Washington, D.C. 20554

Mike Pabian  
Ameritech  
Room 4H82  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60296-1025

Kathryn C. Brown\*  
Chief, Common Carrier Bureau  
Federal Communications Comm'n  
Room 500  
Washington, D.C. 20054

ITS\*  
2100 M Street, N.W., Suite 140  
Washington, D.C. 20554

Janice Myles  
Common Carrier Bureau  
1919 M Street, N.W., Room 544  
Washington, D.C., 20554

\* By Hand

R. Michael Senkowski  
Michael Yourshaw  
Wiley, Rein & Fielding  
1776 K St., N.W.  
Washington, D.C. 20006-2304

Lawrence W. Katz  
Bell Atlantic  
1320 N. Court House Road  
8th Floor  
Arlington, VA 22201

M. Robert Sutherland  
A. Kirven Gilbert III  
BellSouth Corporation  
Suite 1700  
1155 Peachtree St., NE  
Atlantic, GA 30309-3610

Robert M. Lynch  
Durward D. Dupre  
SBC Communications Inc.  
One Bell Center, Room 3532  
St. Louis, MO 63101